

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KARTHIK SUBRAMANI,)	Case No. 13-cv-01605-SC
)	
Plaintiff,)	ORDER GRANTING DEFENDANT'S
)	<u>MOTIONS TO COMPEL</u>
v.)	
)	
WELLS FARGO BANK, N.A.; FIDELITY)	
NATIONAL TITLE COMPANY; et al.,)	
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Defendants.)	
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I. INTRODUCTION

Now before the Court are Defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") motions to compel responses to requests for admission, ECF No. 53 ("RFA Mot."), and to compel responses to Wells Fargo's first set of interrogatories, ECF No. 54 ("Interr. Mot."). Wells Fargo also seeks monetary sanctions. Both motions are fully briefed,¹ and the Court finds them suitable for disposition without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons set forth below, the motions are GRANTED, and Wells Fargo's request for sanctions is DENIED WITHOUT

¹ ECF Nos. 58 ("Interr. Opp'n"), 59 ("RFA Opp'n"), 61 ("Interr. Reply"), 62 ("RFA Reply").

1 PREJUDICE.

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3 **II. BACKGROUND**

4 This is a mortgage foreclosure case. Plaintiff Karthik
5 Subramani alleges that Wells Fargo securitized his home loan in
6 violation of the terms of a Pooling and Servicing Agreement. On
7 October 7, 2014, Wells Fargo served upon Mr. Subramani its First
8 Set of Requests for Admission and First Set of Interrogatories.
9 Grewal Decl. I ¶ 2. On November 10, 2014, Mr. Subramani served on
10 Wells Fargo responses to both the interrogatories and the requests
11 for admission. Id. ¶¶ 5-6. The next day, counsel for Wells Fargo
12 contacted counsel for Mr. Subramani to express Wells Fargo's
13 concerns with Mr. Subramani's responses. Id. Ex. E. Mr.
14 Subramani's attorney responded by asserting that the responses
15 "answered the questions and were responsive." Id. Ex. F. Mr.
16 Subramani's attorney refused to amend the answers but informed
17 Wells Fargo that it had "the option of making a motion to compel
18 with the Court for the relief you seek." Id. Wells Fargo now
19 moves to compel.

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21 **III. DISCUSSION**

22 The Federal Rules of Civil Procedure authorize party-initiated
23 discovery of any evidence that is relevant to any party's claims or
24 defenses. Fed. R. Civ. P. 26(b)(1).

25 **A. Requests for Admission**

26 Federal Rule of Civil Procedure 36 provides that "[a] party
27 may serve on any other party a written request to admit, for
28 purposes of the pending action only, the truth of any matters

1 within the scope of Rule 26(b)(1) relating to . . . facts, the
2 application of law to fact, or opinions about either" Fed.
3 R. Civ. P. 36(a). The same rule requires that "[i]f a matter is
4 not admitted, the answer must specifically deny it or state in
5 detail why the answering party cannot truthfully admit or deny it."
6 Fed R. Civ. P. 36(a)(4). Additionally, "[t]he answering party may
7 assert lack of knowledge or information as a reason for failing to
8 admit or deny only if the party states that it has made reasonable
9 inquiry and that the information it knows or can readily obtain is
10 insufficient to enable it to admit or deny." Id. If the
11 requesting party believes an answer to be insufficient or an
12 objection to be meritless, that party may move to determine the
13 answer or objection's sufficiency. Fed. R. Civ. P. 36(a)(5).

14 Wells Fargo asserts that Mr. Subramani's answers to requests
15 for admission ("RFA") numbers 5, 8, and 9 were insufficient. RFA 5
16 asks Mr. Subramani to "Admit that YOU did not make payments on the
17 LOAN to any entity other than WELLS FARGO." ECF No. 53-2 ("Grewal
18 Decl. I") Ex. A. Mr. Subramani responded: "Plaintiff is without
19 sufficient knowledge or information to form a belief as to the
20 truth of RFA 5 and, on that basis, denies the RFA." This response
21 is inadequate for two reasons. First, it does not indicate, as
22 required by Rule 36(a)(4), that Mr. Subramani made a reasonable
23 inquiry before denying sufficient knowledge and information to
24 respond. Second, as Wells Fargo points out, Mr. Subramani
25 "certainly has personal knowledge of who he made payments to on the
26 loan." RFA Mot. at 3. Mr. Subramani either needs to admit to this
27 matter, specifically deny it, "or state in detail why the answering
28 party cannot truthfully admit or deny it." Fed. R. Civ. P.

1 36(a)(4) (emphasis added). When the question asks for information
2 that Mr. Subramani is very likely to have, Mr. Subramani must
3 respond in much more detail and explain why he does not have that
4 information. A bare assertion that he performed a reasonable
5 inquiry and lacks information on this matter is insufficient; he
6 must explain in detail why he cannot truthfully admit or deny this
7 request for admission.

8 RFA number 8 asks Mr. Subramani to "Admit that WELLS FARGO
9 never promised that the LOAN would not be SECURITIZED." Grewal
10 Decl. I Ex. A. Mr. Subramani responded, "Plaintiff is without
11 sufficient knowledge or information to form a belief as to the
12 truth of RFA 8 and, on that basis, denies the RFA." Id. Ex. C.
13 For the same reasons described above, Mr. Subramani's response is
14 insufficient. In this case, the circumstances surrounding the
15 securitization of the loan is critical. The Second Amended
16 Complaint ("SAC") alleges that Wells Fargo transferred Mr.
17 Subramani's mortgage loan to a securitization trust in violation of
18 California law. ECF NO. 35 ("SAC") ¶¶ 14-15. This RFA therefore
19 requests admission of a matter about which Mr. Subramani is
20 eminently likely to have information and which forms a crucial part
21 of one of his claims against Defendants. Mr. Subramani must admit
22 or deny the request, or explain in detail why he cannot do so.

23 Finally, RFA number 9 asks Mr. Subramani to "Admit that
24 SECURITIZATION did not change the PAYMENT SCHEDULE for the LOAN."
25 Mr. Subramani answered, "Plaintiff is without sufficient knowledge
26 or information to form a belief as to the truth of RFA 9 and, on
27 that basis, denies the RFA." Once again, and for the same reasons,
28 this response is insufficient. Mr. Subramani must admit or deny

1 the request, or explain in detail why he cannot do so. Wells
2 Fargo's motion to compel is GRANTED with respect to request for
3 admission numbers 5, 8, and 9.

4 **B. Interrogatories**

5 Rule 33 permits a party to "serve on any other party no more
6 than 25 written interrogatories" Fed. R. Civ. P. 33(a)(1).
7 "Each interrogatory must, to the extent it is not objected to, be
8 answered separately and fully in writing under oath." Fed. R. Civ.
9 P. 33(b)(3). Rule 37 permits a party to move to compel an answer
10 if a party fails to answer an interrogatory submitted under Rule
11 33. Wells Fargo argues that Mr. Subramani's responses to all 21
12 interrogatories are evasive and incomplete, for various reasons.

13 **1. Interrogatory Numbers 1, 3, 5, 15, and 21**

14 First, in interrogatory numbers 1, 3, 5, 15, and 21, Wells
15 Fargo asked Mr. Subramani to state all facts supporting certain
16 contentions in the SAC. ECF No. 54-2 ("Grewal Decl. II") Ex. B.
17 Mr. Subramani's answers are virtually identical and entirely devoid
18 of factual information. In response to each question, he objects
19 on the grounds that answering would require him to reveal trial
20 preparation material and privileged communications. Mr. Subramani
21 then proceeds to state that the subject matter of the interrogatory
22 will be addressed in an expert report that he will produce to Wells
23 Fargo or that answers can be "ascertained by a review of records
24 which Plaintiff will make available for Wells Fargo's inspection."
25 Grewal Decl. II Ex. D.

26 As a general matter, interrogatories directing a plaintiff to
27 state facts supporting contentions in his complaint are "entirely
28 appropriate." In re Savitt/Adler Litig., 176 F.R.D. 44, 48

(N.D.N.Y. 1997); see also Tennison v. City & Cnty. of San Francisco, 226 F.R.D. 615, 618 (N.D. Cal. 2005) (granting motion to compel answers to interrogatories asking plaintiff to state all facts supporting a claim); Black Hills Molding, Inc. v. Brandom Holdings, LLC, 295 F.R.D. 403, 413 (D.S.D. 2013) (providing a detailed discussion of so-called "contention interrogatories"). As in In re Savitt/Adler, "[t]he interrogatories seek facts, not documents or tangible objects, and the proper form of response is a narrative answer, not a reference to documents or objects where the answers might be found." 176 F.R.D. at 48. Accordingly, Mr. Subramani's objections to these interrogatories are overruled, and Wells Fargo's motion is GRANTED with respect to interrogatory numbers 1, 3, 5, 15, and 21.

2. Interrogatory Numbers 7, 9, 11, 13, 17, and 19

Interrogatory numbers 7, 9, 11, 13, 17, and 19 are identical to those discussed above: they ask Mr. Subramani to state all facts supporting certain contentions in the complaint. In response to each, Mr. Subramani objects "on the ground that the allegations set forth in [the relevant paragraphs] of the Second Amended Complaint speak for themselves." Grewal Decl. II Ex. D. Mr. Subramani further directs Wells Fargo to certain paragraphs of the SAC.

As discussed above, these questions are entirely appropriate, and they require responses in the form of a narrative answer, "not a reference to documents or objects where the answers might be found." In re Savitt/Adler, 176 F.R.D. at 48. If the contentions in the SAC speak for themselves and there are no additional supporting facts, Mr. Subramani may say so. Alternatively, if the only supporting facts are in the SAC, Mr. Subramani should list

1 those facts, rather than refer Wells Fargo to other paragraphs in
2 the SAC. Wells Fargo's motion is GRANTED with respect to
3 interrogatory numbers 7, 9, 11, 13, 17, and 19.

4 **3. Document Identifications**

5 Interrogatory numbers 2, 4, 6, 8, 10, 12, 14, 16, 18, and 20
6 ask Mr. Subramani to identify all documents "referring to, relating
7 to, evidencing, or supporting the facts identified" in response to
8 Wells Fargo's contention interrogatories. Grewal Decl. II Ex. B.
9 To each question, Mr. Subramani responded by objecting that the
10 request was unduly burdensome or that it requires him to reveal
11 trial preparation material. Mr. Subramani further answered that he
12 would "make available for Wells Fargo's review all responsive
13 documents." Grewal Decl. II Ex. D.

14 Generally speaking, an interrogatory which requests the
15 identification of documents relating to facts may be served on a
16 party. Smith v. Cafe Asia, 256 F.R.D. 247, 255 (D.D.C. 2009).
17 Because Mr. Subramani refused to answer the contention
18 interrogatories, it is impossible for the Court to determine the
19 scope of the information sought and whether responding might be
20 unduly burdensome. Because the Court granted Wells Fargo's motion
21 with respect to the contention interrogatories, the Court GRANTS
22 Wells Fargo's motion with respect to the document identification
23 interrogatories as well. If Mr. Subramani honestly believes, after
24 adequately answering the contention interrogatories, that
25 identifying the relevant documents is still unduly burdensome, he
26 may say so. But he must provide a specific basis for those
27 responses, not merely a bare assertion.

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1 **4. Interrogatory Number 21**

2 Interrogatory number 21 asked Mr. Subramani to "IDENTIFY the
3 'true beneficiary' as alleged in the COMPLAINT." Grewal Decl. II
4 Ex. B. Mr. Subramani responded:

5 Plaintiff objects to Interrogatory 21 on the
6 ground that it requires Plaintiff to reveal
7 trial preparation material and communications
8 between Plaintiff's attorneys and Plaintiff's
9 expert witness which are protected from
10 disclosure. By way of further response
11 Plaintiff states that the subject matter of
12 Interrogatory 21 will be addressed in the
13 report of Plaintiff's expert which shall be
14 produced at least 90 days in advance of trial.

15 Grewal Decl. II Ex. D. Not only was Mr. Subramani's answer
16 completely inadequate and nonresponsive, it is inconceivable to the
17 Court that Mr. Subramani or his attorney believed this answer to be
18 anywhere close to acceptable. The question was narrowly tailored
19 and requested only one very specific piece of clarifying
20 information about the SAC. Wells Fargo's motion is GRANTED with
21 respect to interrogatory number 21.

22 **C. Sanctions**

23 Rule 37 states that the Court must, if granting a motion to
24 compel, "after giving an opportunity to be heard, require the party
25 or deponent whose conduct necessitated the motion, the party or
26 attorney advising that conduct, or both to pay the movant's
27 reasonable expenses incurred in making the motion, including
28 attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). That Rule also
provides for several circumstances in which the Court may decline
to sanction the party whose conduct necessitated the motion. Id.
Accordingly, Wells Fargo seeks sanctions in connection with these
motions. The Court is sympathetic to Wells Fargo's request for

1 sanctions, given that Mr. Subramani's completely inadequate
2 responses indicate a lack of good faith in his effort to answer the
3 requests for admission and interrogatories. However, Civil Local
4 Rule 7-8 requires that "[a]ny motion for sanctions, regardless of
5 the sources of authority invoked, must . . . be separately filed
6 and the date for hearing must be set in conformance with Civil L.R.
7 7-2." See also Yee v. Ventus Capital Servs., No. C05-03097(RS),
8 2006 WL 3462661, at *1 (N.D. Cal. Nov. 30, 2006) (denying request
9 for sanctions brought in connection with motion to compel because
10 sanctions request was not separately filed). Accordingly, Wells
11 Fargo's request for sanctions is DENIED WITHOUT PREJUDICE, and
12 Wells Fargo may notice a separate motion for sanctions in a manner
13 consistent with the Civil Local Rules.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, Defendant Wells Fargo Bank,
3 N.A.'s motions to compel are GRANTED. Plaintiff Karthik Subramani
4 is hereby ORDERED to serve upon Wells Fargo complete answers to
5 Wells Fargo's interrogatories and requests for admission within
6 fourteen (14) days of the signature date of this order. Failure to
7 respond adequately will result in dismissal of this action. See
8 Fed. R. Civ. P. 37(b) (2) (A) (v) (permitting the Court to dismiss an
9 action in whole or in part for failure to obey a discovery order).
10 Wells Fargo's request for sanctions is DENIED WITHOUT PREJUDICE.

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12 IT IS SO ORDERED.

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14 Dated: December 18, 2014

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16 UNITED STATES DISTRICT JUDGE
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